

**STATE OF INDIANA  
DEPARTMENT OF STATE REVENUE**

**IN REGARDS TO THE MATTER OF:**

**ATLAS FOUNDATION LIMITED  
DOCKET NO. 29-2003-0335**

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND PROPOSED ORDER**

An administrative hearing was held on Wednesday, October 15, 2003 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Atlas Foundation Limited, was represented by its President Glen Voris. Steve Carpenter appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-32-8-5, evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Order.

**REASON FOR HEARING**

On August 13, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars (\$1,000) and its license was suspended for a period of three (3) years. The Petitioner protested in a timely manner.

**SUMMARY OF FACTS**

- 1) The Indiana Department of Revenue Criminal Investigation Division conducted an investigation of the Petitioner on August 7, 2003.
- 2) According to the Department's letter dated August 13, 2003, the Criminal Investigation Division (CID) found, "Mr. Calhoun offered to operate Atlas Foundation LTD's charity gaming events on behalf of the organization and the organization accepted Mr. Calhoun's offer. According to the CID report, Mr. Calhoun spent his money on supplies for the gaming events. It was originally intended that Mr. Calhoun would operate the organization's bingo events under the direction of the board of directors. However, in reality, Mr. Calhoun assumed complete control of the organization's bingo events. Mr. Calhoun did not provide any accounting to the organization's board of directors and utilized his family members and friends to operate the organization's bingo events. On July 10, 2003, the organization's board of directors agreed to remove John Calhoun as treasurer of the

organization and from any involvement in the organization's bingo events. The Fort Wayne City Police were present to ensure a smooth transition. According to the board of director's minutes, while John Calhoun operated the bingo events, individuals not listed as operators or workers were involved; also, the workers and operators were accepting tips from patrons. On August 1, 2003, the organization's board of directors agreed to voluntarily surrender the organization's bingo license..."

- 3) On August 13, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars (\$1,000) and its license was suspended for a period of three (3) years.

### **FINDINGS OF FACTS**

- 1) The Indiana Department of Revenue Criminal Investigation Division initiated an investigation of the Petitioner on August 1, 2003. (Record at 8).
- 2) According to the Department's Criminal Investigation Division Agent, the Petitioner had entered into an agreement with John Calhoun to operate its charitable gaming activities. (Record at 10).
- 3) John Calhoun was a member of the Petitioner's organization. (Record at 14).
- 4) Petitioner's representative stated during the hearing, "Earlier that fall John Calhoun became involved and he brought all his--...and John showed up at some of these events with his people and they become members. And in the meantime I learned that John had run bingo, was successful at bingo and he was helpful with everything..." (Record at 16).
- 5) Petitioner's representative talking about the Petitioner's new location for conducting its charity gaming stated, "John Calhoun found the location." (Record at 16).
- 6) Petitioner's representative speaking about his role in Petitioner's charity gaming operations contends, "I knew right then I had lost the game. I knew at that time in the following week John changed the locks on me and I was an outsider." (Record at 19).
- 7) Petitioner's representative opines, "He just simply wouldn't leave, he just wouldn't leave. And so I went to the police department and got a policeman to be there on Sunday night and what we were going to do at the break time is give John this minutes of the meeting here simply telling the board of directors has relieved him of all his duties, he is no longer treasurer." (Record at 21, See also Petitioner's Exhibit #2).
- 8) Petitioner continued to use Mr. Calhoun to run its charity gaming operation. Petitioner's representative stated, "...I met with John Monday morning and John said if I could stay another month or six weeks or something like that then we could have a smooth transition. And so I thought, well, that's my way of getting the bingo up and running without being stripped of everything because they had been running stuff out the back door, I don't know what they were taking out. And so...we agreed that John would stay on for a period of time..." (Record at 23).

- 9) Questioning the Petitioner's representative about Mr. Calhoun's involvement with the Petitioner's charity gaming is as follows:

MR. CARPENTER: Did he or did he not offer to the Atlas Foundation to operate their bingo?

MR. VORIS: Yes.

MR. CARPENTER: You also heard Ms. Klinkose say that the Atlas Foundation accepted that offer, is that true? He ran the bingo, didn't he?

MR. VORIS: Oh, yes.

MR. CARPENTER: So you accepted the offer, correct?

MR. VORIS: Yes.

MR. CARPENTER: Okay. You also stated of Ms Klinkose stated that Mr. Calhoun purchased the gaming supplies; is that true?

MR. VORIS: Yeah, because I didn't--

MR. CARPENTER: Isn't it also true that Mr. Voris made the decisions to operate the game including, but not limited to, hiring and firing the workers, resolving disputes, and handling all the money?

MR. VORIS: We has a pool of volunteer—

MR. CARPENTER: Did he do those things, yes or no, sir?

MR. VORIS: He did yes.

(Record at 56).

- 10) The Department then notified Petitioner by letter on August 13, 2003 that its Indiana Charity Gaming License was suspended for a period of three (3) years and assessed one thousand dollars (\$1,000).

### **STATEMENT OF LAW**

- 1) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department's findings are incorrect rests with the individual or organization against which the department's findings are made. The department's investigation establishes a prima facie presumption of the validity of the department's findings.
- 2) The Department's administrative hearings are conducted pursuant to IC § 4-21.5 et seq. (See, House Enrolled Act No. 1556).
- 3) "[B]ecause Pendelton's interest in his insurance license was a property interest, and not a liberty interest. Rather, a preponderance of the evidence would have been sufficient." Pendelton v. McCarty, 747 N.E. 2d 56, 65 (Ind. App. 2001).
- 4) "It is reasonable...to adopt a preponderance of the evidence standard where it can be demonstrated that a protected property interest exists." Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind.App. 1993).
- 5) IC 4-32-9-15 **A qualified organization may not contract or otherwise enter into an agreement with an individual, a corporation, a partnership, a limited liability company, or other association to conduct an allowable event for the benefit of the organization. A**

**qualified organization shall use only operators and workers meeting the requirements of this chapter to manage and conduct an allowable event.**” (Emphasis added).

- 6) IC 4-32-9-17 states, “A qualified organization shall maintain accurate records of all financial aspects of an allowable event under this article...”
- 7) IC 4-32-9-17 further states, “...A qualified organization shall make accurate reports of all financial aspects of an allowable event to the department within the time established by the department...”
- 8) According to IC 4-32-9-17, “...The department shall, by rule, require a qualified organization to deposit funds received from an allowable event in a separate and segregated account set up for that purpose...”
- 9) Pursuant to IC 4-32-9-17 “...**All expenses of the qualified organization with respect to an allowable event shall be paid from the separate account.**”(Emphasis added).
- 10) IC 4-32-9-23 provides, “An operator or a worker may not be a person who has been convicted of or entered a plea of nolo contendere to a felony committed in the preceding ten (10) years, regardless of the adjudication, unless the department determines that: (1) the person has been pardoned or the person's civil rights have been restored; or (2) subsequent to the conviction or entry of the plea the person has engaged in the kind of good citizenship that would reflect well upon the integrity of the qualified organization and the department.”
- 11) IC 4-32-9-27 states, “An operator or a worker may not directly or indirectly participate, other than in a capacity as operator or worker, in an allowable event...”
- 12) IC 4-32-9-28 states, “An operator must be a member in good standing of the qualified organization that is conducting an allowable event for at least one (1) year at the time of the allowable event.”
- 13) According to IC 4-32-9-29, “A worker must be a member in good standing of a qualified organization that is conducting an allowable event for at least thirty (30) days at the time of the allowable event.”
- 14) IC 4-32-9-25 states, “Except as provided in subsection (b), an operator or a worker may not receive remuneration...”
- 15) IC 4-32-12-2 states, “The department *may impose* upon a qualified organization or an individual the following *civil penalties*:(1) Not more than one thousand dollars (\$1,000) for the first violation.(2) Not more than two thousand five hundred dollars (\$2,500) for the second violation.(3) Not more than five thousand dollars (\$5,000) for each additional violation.” (Emphasis added).
- 16) IC 4-32-12-1(a) provides in pertinent part, “The Department may suspend... an individual ...for any of the following: (1) Violation of a provision of this article or of a rule of the department...”
- 17) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
  - (1) Suspend or revoke the license.
  - (2) Lengthen a period of suspension of the license.

- (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
- (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.

### **CONCLUSIONS OF LAW**

- 1) On August 13, 2003, the Petitioner was assessed civil penalties in the amount of one thousand dollars (\$1,000) and its license was suspended for a period of three (3) years.
- 2) It is clear from the testimony of Petitioner's representative that Mr. Calhoun was retained by the Petitioner to operate its charity gaming in violation of IC 4-32-9-15.

### **PROPOSED ORDER**

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

**THIS PROPOSED ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bruce R. Kolb / Administrative Law Judge